

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GUADALUPE TORRES,  
Plaintiff,

NO. CIV. S-04-79 LKK/GGH P

v.

O R D E R

HEMSLEY, et al.,  
Defendants.

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On November 8, 2005, the magistrate filed findings and recommendations herein which were served on all parties. The court has reviewed the file and the findings and recommendations issued by the magistrate judge and finds that the decision is not sufficiently supported by the record. There remains a disputed material fact about the nature of the injury to plaintiff's eye at

1 the time that he sought medical care via Officer Hemsley.  
2 Additionally, it is also disputed whether defendant, or the nurse,  
3 decided that the medical care could be delayed until later that  
4 evening. In order to determine whether Hensley exhibited  
5 deliberate indifference with regards to plaintiff's injury, a  
6 determination must be made about whether a serious medical need  
7 existed. Wilson v. Seiter, 501 U.S. 294, 299 (1991). Taking all  
8 reasonable inferences in favor of the plaintiff at this time, the  
9 court finds that summary judgment is inappropriate because it is  
10 disputed whether plaintiff faced a substantial risk of serious  
11 harm.

12 The magistrate judge found that, based on the facts plaintiff  
13 provided, defendant could have reasonably inferred that plaintiff's  
14 injury was not an emergency and that he could wait to be seen that  
15 evening during pill call, and therefore that defendant was entitled  
16 to qualified immunity. However, this court finds that by taking  
17 all inferences in favor of the plaintiff, it is not possible to  
18 determine at this time whether the defendant acted reasonably in  
19 not ensuring that plaintiff received prompt medical care.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. The court DECLINES to adopt the magistrate judge's  
22 November 8, 2005 findings and recommendations; and

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IT IS SO ORDERED.

/s/Lawrence K. Karlton  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT